It is believed that any objections presented by the constitutional provision providing that "judges shall not instruct juries with respect to matters of fact"[7] "may be met by a little ingenuity of construction. If such a construction is not possible, it would seem that the principal case goes as far as the present state of the law will permit. T. J. L.

CONFLICT OF LAWS: PERSONAL LIABILITY OF STOCKHOLDER OF FOREIGN CORPORATION DOING BUSINESS IN CALIFORNIA.—Under what circumstances is a stockholder of a foreign corporation doing business in California personally liable for his proportionate share of the corporate debts contracted in California,[1] when the law of the place of incorporation does not impose a similar liability? If the articles of incorporation expressly provide for doing business in California, California courts will enforce the liability against stockholders over whom they have jurisdiction[2] and in so doing their action is not unconstitutional.[3] *Thomas v. Mattheissen*[4] extends Pinney v. Nelson to the extent that if there is an express provision for doing business in California in the articles of incorporation, another provision therein, or in the subscription agreement, that the liability of the stockholders shall be determined by the law of the place of incorporation, and not by that of California, does not prevent the enforcement of the personal liability imposed by the California law in the federal courts of any state. It is interesting to observe that the court expressly left open the question decided in Risdon Iron and Locomotive Works v. Furness,[5] that is, the effect of a general provision in the articles of incorporation for doing business in foreign states without any express reference to possible differences in their laws.

In the Risdon case, an English joint stock company was authorized by its charter to carry on business in the United States, Australia, and elsewhere, and its directors were empowered by its by-laws to comply with the laws of any country where it might do business. The company did business in California. In refusing to enforce the personal liability of the California statutes, the English Court of Appeal held that the general authorization to do business in foreign countries must not be considered to authorize the contracting of a liability inconsistent with the fundamental provision in the company's charter that it was a company of limited

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[7] Constitution of California, Art. VI, sec. 19.

[1] Civil Code of California, sec. 322; Constitution of California, Art. XII, sec. 3.

[2] Peck v. Noee, (1908) 154 Cal. 351, 97 Pac. 865; Thomas v. Wentworth Hotel Co., (1910) 158 Cal. 275, 110 Pac. 942.

[3] Pinney v. Nelson, (1901) 183 U. S. 144, 22 Sup. Ct. Rep. 52.

[4] (February 2, 1914) 232 U. S. 221, 34 Sup. Ct. Rep. 312.

[5] (1906) 1 K. B. 49, affirming judgment of Kennedy, J., (1905) 1 K. B. 305.

liability. As a matter of fact, however, did not the general authorization to carry on mining operations in the United States and to purchase machinery for that purpose confer authority to purchase the machinery in California? If so, then it would seem, that unless both parties contracted with reference to some other laws, the *lex loci contractus* should determine the nature and extent of the obligation of the shareholders as well as that of the corporation.[6] The *ratio decidendi* of the principal case to the effect the authority to carry on business in California was the dominant order and "when the defendant authorized that he could not avoid the consequences by saying that he did not foresee, or intend, or that he forbade them" would seem to apply to the Risdon case. Of course, the English Court might have admitted the applicability of the California law in the first instance and still refused to enforce the personal liability of the stockholders on the ground that it considered the California statute as penal in its nature or as opposed to the public policy of England.

Some textbooks[7] declare the rule to be that the only liability enforceable against a stockholder is that imposed by the law of the place of incorporation. As has been ably pointed out,[8] however, a careful examination of the cases cited in support of this proposition will show that in most of them the place of incorporation and contracting the debt were the same, or were assumed to be the same, so that there was no conflict between the law of the place of incorporation and that of contracting. The only question necessarily involved was whether the law of the place of incorporation *and* contracting should be enforced in the courts of the domicile of the stockholder. In the few cases in which the precise point under discussion has arisen, the courts have been unusually careful to confine their remarks to the particular cases before them, so that on adjudicated cases, no general rule can be considered to be established. On principle, it would seem that the personal liability imposed by the California statute should be enforced in all jurisdictions as to contracts actually made and authorized to be made by foreign corporations in California, unless the courts of the forum can bona fide consider the liability as penal or as opposed to the public policy of their state.

T. J. L.

CONSTITUTIONAL LAW: FEDERAL AGENCIES: TAXATION OF BONDS OF TERRITORIAL MUNICIPALITIES:—A novel question has just been decided by the Supreme Court of the United States in the

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[6] "What Law Governs the Validity of a Contract", Professor Joseph H. Beale, 23 Harvard Law Review, 1-12, 79-103, 194-208, 261-272.

[7] Morawetz, Private Corporations, 2nd ed. sec. 854 and cases cited; Cook on Corporations, 6th ed. sec. 223, p. 584.

[8] "The Individual Liability of Stockholders and the Conflict of Laws", Professor W. N. Hohfeld 10 Columbia Law Review p. 294, note 24.